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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/832,678	04/11/2001	Marian E. Clark	VMA-329-B	1878

7590 07/15/2003

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EXAMINER

STRIMBU, GREGORY J

ART UNIT	PAPER NUMBER
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3634

DATE MAILED: 07/15/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/832,678

Applicant(s)

CLARK ET AL.

Examiner

Gregory J. Strimbu

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 April 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 20-49 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 20-49 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

Priority

Applicant has not complied with one or more conditions for receiving the benefit of an earlier filing date under 35 U.S.C. 120 because the invention, as set forth in the instant application, is not disclosed, in the manner provided by the first paragraph of section 112 of this title in an application previously filed in the United States, i.e., U.S. Patent No. 5,906,071. Note that the parent application 5,906,071 fails to set forth any method steps.

Claim Rejections - 35 USC § 112

Claims 20-31, 33, 36-49 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Recitations such as "a moveable member" on line 3 of claim 20 render the claims indefinite because it is unclear if the applicant is referring to the moveable member set forth above or is attempting to set forth another moveable member in addition to the one set forth above. Recitations such as "at least one sensor" on line 8 and "a sensor" on line 10 of claim 1 render the claims indefinite because they are confusingly redundant. The recitation "at least one sensor" must include a sensor therefore the recitation "a sensor" on line 10 of claim 1 is unnecessary. Recitations such as "with a control program of control means" on lines 12-13 of claim 36 render the claims indefinite because it is unclear what the applicant is attempting to set forth. What structure

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corresponds to the control means? Does the control program comprise the control means?

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 20-49 are rejected under 35 U.S.C. 103(a) as being unpatentable over Buchanan '071. Buchanan '071 discloses a controlled moveable member D, the movable member capable of driving the moveable member in either a first direction or in a second direction opposite from the first direction, the driving being in response to actuation of a reversible electric motor (not shown, but comprising the motor) for driving the moveable member by control means (not shown, but see column 10, line 55 to column 11, line 3), generating at least one motion input signal corresponding to motion of the moveable member along a fixed path of travel with at least one sensor 88 positioned between the motor and the moveable member, the at least one sensor including a sensor located on a clutch 80 positioned between the motor and the moveable member and selectively actuating the motor with control means responsive to the at least one input signal. Buchanan '071 is silent concerning a particular method of operating the moveable member.

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However, the use of the apparatus, as disclosed by Buchanan '071 would lead to the method steps set forth in claims 20-49.

Response to Arguments

Applicant's arguments filed April 14, 2003 have been fully considered but they are not persuasive.

It should first be noted that since the disclosure of Buchanan '071 fails to set forth a method, priority under 35 USC 120 cannot be granted for failure of the disclosure of Buchanan '071 to support the claims set forth in the instant application under 35 USC 112, first paragraph. Therefore, Buchanan '071 qualifies as prior art under 35 USC 102 and 35 USC 103. However, the rejection set forth in the previous Office action should have been made under 35 USC 103 rather than 35 USC 102 because Buchanan '071 does not disclose the specific method steps set forth in the claims of the instant application. Even if Buchanan '071 had disclosed the specific method steps and the instant application had priority under 35 USC 120 to Buchanan '071, Buchanan '071 would still be prior art under both 35 USC 102 and 103 because the instant application is by another. See MPEP 2136.04.

Conclusion

THIS ACTION IS NOT MADE FINAL.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gregory J. Strimbu whose telephone number is 703-305-3979. The examiner can normally be reached on Monday through Friday 8:00 to 4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Daniel P. Stodola can be reached on 703-308-2686. The fax phone numbers for the organization where this application or proceeding is assigned are 703-305-3597 for regular communications and 703-305-3597 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-2168.

A handwritten signature in black ink, appearing to read "Gregory J. Strimbu", with a long horizontal flourish extending to the right.

Gregory J. Strimbu
Primary Examiner
Art Unit 3634
July 14, 2003